



# Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



Lt. Raymund Rogers  
99 West Center Street  
West Bridgewater, Massachusetts 02379-1798

## Re: Public Enforcement Letter

Dear Lieutenant Rogers:

As you know, the State Ethics Commission has conducted a preliminary inquiry into allegations that you violated the state conflict of interest law, General Laws c. 268A, by asking a subordinate to provide private transportation for your family members. Based on the staff's inquiry (discussed below), the Commission voted on January 31, 2002, that there is reasonable cause to believe that you violated the state conflict of interest law, G.L. c. 268A, §23(b)(2) and §23(b)(3).

For the reasons discussed below, the Commission does not believe that further proceedings are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with these provisions of the conflict-of-interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

### **I. Discussion**

You are a West Bridgewater police lieutenant and second-in-command in the department. In your official capacity, you participate in hiring recommendations and salary increases concerning subordinate employees; you serve as the overall supervisor and direct supervisor on weekend shifts; and you assign shifts to subordinate officers and participate in disciplinary matters.

On several occasions over a period of approximately a year and a half, you asked a subordinate police employee to perform several personal errands involving private transportation for your family members. The requests took place at the police station during normal working hours. These errands were performed on town time, using an unmarked police vehicle. Each errand took about 15 to 20 minutes for a distance of a few miles round trip. You did not order the subordinate to perform these errands, nor did you expressly invoke your lieutenant position when making the requests. The subordinate did not feel forced to perform the errands, but he acknowledged that the requests came from you as his supervisor, and therefore, he complied. You did not have any private family, business or social relationship with this employee or history of doing favors for each other that would provide a personal reason for him doing these favors for you. You did not disclose to your appointing authority that you were making these requests prior to making them.

As a police lieutenant, you are a municipal employee as that term is defined in G.L. c. 268A, §1(g). As such, you are subject to the conflict of interest law G.L. c. 268A<sup>1/</sup> generally and, in particular for the purposes of this discussion, to §23 of that statute.

Section 23 is the “code of conduct” section of the conflict-of-interest law. Section 23(b)(2) prohibits any municipal employee from knowingly, or with reason to know, using or attempting to use his official position to secure for anyone an unwarranted privilege of substantial value which is not properly available to similarly situated individuals. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, with knowledge of the relevant facts, to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence. This subsection’s purpose is to deal with appearances of impropriety and, in particular, appearances that public officials have given people preferential treatment. Section 23(b)(3) goes on to provide that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict. The appointing authority must maintain that written disclosure as a public record.

There is reasonable cause to believe that you violated §23(b)(2) by asking your subordinate to perform several personal errands for you. Where you were the supervisor and had the ability to and did take action concerning the terms and conditions of your subordinate’s employment (such as shift determinations), your requests for private errands constituted a use of your position. In the absence of a private family, business or social relationship with the subordinate, some history of reciprocity, or some other countervailing factor, it seems reasonable to infer that your subordinate did these personal favors for you because you, as his supervisor, asked him to. Your ability to ask for personal favors under these circumstances was a special advantage or privilege. There was no justification for such request, such as an emergency either at the police department or in your personal family situation. Nor, as just noted, was there anything about your private relationship or history with the subordinate that would justify such requests. Therefore, asking for such favors under these circumstances was an unwarranted privilege.

Having a subordinate provide private transportation services for a supervisor’s family members is of significant value (i.e., not de minimis), both monetarily (exceeding \$50 in taxicab costs) and intangibly, as it provided you with an on-call private transportation service for your family. There is no town ordinance or other policy that would make these types of private favors properly available to others in your type of situation.

In addition, there is reasonable cause to believe that you violated §23(b)(2) by asking your subordinate to perform personal errands for you on municipal time using public resources. The Commission has consistently held that the use of public resources of substantial value (\$50 or more) for a private purpose not authorized by law amounts to the use of one’s official position to secure an unwarranted privilege. These resources include a public employee’s time on the public payroll and the use of public vehicles.

There is also reasonable cause to believe that you violated §23(b)(3) by intermingling your public and private dealings with a subordinate. By asking for private favors from a subordinate while supervising that subordinate, you acted in a manner which would cause a reasonable person knowing these facts to conclude that the subordinate might unduly enjoy your favor in the performance of your official duties as his supervisor. Therefore, there is

reasonable cause to believe that you violated §23(b)(3). Moreover, you did not make the relevant disclosure that would have kept the appearance problem from arising.

## **II. Disposition**

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$2,000 for each violation. The Commission chose to resolve this case with a public enforcement letter rather than imposing a fine because it believes the public interest would best be served by doing so. The Commission wants to make clear that public employees in supervisory positions must be mindful that even occasional requests to subordinates for personal favors, even if there is no explicit invocation of the superior's position or intent to coerce, nevertheless may violate the conflict of interest law because of the highly exploitable supervisor/subordinate relationship.

Based upon its review of this matter, the Commission has determined that your receipt of this public enforcement letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Very truly yours,

Peter Sturges  
Executive Director

**DATE: March 21, 2002**

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<sup>y</sup>A copy of G.L. c. 268A is attached for your information.